



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 30] नई दिल्ली, शुक्रवार, दिसम्बर 4, 2009 / अग्रहायण 12, 1931
No. 30] NEW DELHI, FRIDAY, DECEMBER 4, 2009 / AGRAHAYANA 12, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 4th December, 2009:—

I

BILL NO. XV OF 2009

A Bill further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called The Indian Penal Code (Amendment) Act, 2009.
(2) It shall come into force with immediate effect.
2. After Section 326 of the Indian Penal Code 1860, (hereinafter referred to as the code) the following section shall be inserted, namely:—

"326A. Whoever, except in case provided for by Section 335, voluntarily causes injuries to the body of a person by means of an acid, shall be punished with imprisonment for a term of ten years or for imprisonment for life and with fine of fifty thousand rupees which may extend to two lakh rupees."

Short title
and
commencement.

Insertion of
new section
326A.

Voluntarily
Causing
injuries by
acid.

Insertion of
new Chapter
XIII A.

3. After Chapter XIII of the Code, the following Chapter shall be inserted, namely:—

CHAPTER XIII A

OFFENCES RELATING TO MANUFACTURING, DISTRIBUTION AND SALE OF ACID

Punishment
for
manufacturing,
distributing or
selling acids
without
licence.

"267A. Whoever manufactures, distributes or sells any acid without a licence shall be punished with imprisonment of either description for a term which may extend to three years or with fine of one lakh rupees or with both."

Punishment
for selling
acid to
unauthorized
person.

"267B. Whoever sells any acid to any unauthorized person shall be punished with imprisonment of either description for a term which may extend to three years or with fine of one lakh rupees or with both."

Punishment
for
unauthorized
possession of
any acid.

"267C. Whoever found in unauthorized possession of any acid in specified quality, as may be notified shall be punished with imprisonment of either description for a term which may extend to three years or with fine of one lakh rupees or with both."

Explanation.— For the purposes of this Chapter the Central or the State Government within their respective jurisdiction shall issue licences for manufacturing, distribution, sale and possession of specified acids.

STATEMENT OF OBJECTS AND REASONS

Each year a number of women are killed, maimed, blinded or scared for life in acid attacks across the country. But so far this heinous crime has not attracted attention of the Government or the National Crime Records Bureau. Although the acid attack is a crime which can be committed against any person but the crime has a specific gender dimension in our country. In most of the reported cases, the acid attack have been committed on women particularly young women by husbands, lovers, employers, jealous colleagues and even landlords. The acid attack leaves a strong scar on the body of the person which does not go even after the repeated plastic surgeries and the victim carries this stigma of the attack throughout the life. Linked with this acid attack is the relaxed law on the sale of concentrated acid. Today, anybody can walk down and buy litres of highly concentrated acid over the counter just by paying a paltry amount. Many countries have specific law on the offences by acid and law relating to distribution and sale of acids. Unfortunately, in India, the sale of acid is carelessly allowed as a deadly weapon. The offences relating to acid attack are generally tried under Section 326 of the IPC which deals with grievous hurt. It has been opined by many organizations including the Law Commission that the provisions relating to grievous hurt are not broad enough to cover the kind of injuries inflicted through acid attack and the Section 326 gives a wide discretion to the courts as far as the punishment is concerned. The Law Commission, in view of increasing instances of acid attacks especially on women, has suggested sentencing up to life term for the offence. The Law Commission while recommending the life imprisonment for offence relating to acid attack has also highlighted the need for regulating the distribution and sale of the acid and has recommended that it should be banned except for commercial and scientific purposes. It is, therefore, necessary that a separate provision for punishment related to acid attack and manufacturing, distribution, sale and possession of acid should be incorporated in the Indian Penal Code.

Hence, this Bill.

O.T. LEPCHA

II

BILL NO. XXVIII OF 2009

A Bill to provide for the prevention of sexual harassment and exploitation of women employees at their work places by their employers, superiors, or colleagues and of girl students in schools, colleges, universities by their teachers or by the employees or research guides and of inmates of women protection homes or naari niketans by their in charges and employees and of housewives and girls at homes by their near and dear ones through deterrent punishment and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Prevention of Sexual Harassment of Women Employees, Girl Students, Inmates of Women Protection Homes, Housewives and Girls Act, 2009.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) “educational institution” includes all schools, colleges, universities, institutes, vocational training centres and other centres where education or any kind of training is imparted to the girl students;

(c) “employer” means,—

(i) in relation to an establishment under the control of the appropriate Government, the Secretary or head of the Department or the chairman and Managing Director, as the case may be;

(ii) In relation to an establishment under any local Authority or local self Government, the Chief Executive Officer by whatever designation called;

(iii) in relation to other cases, the person or the authority who has the ultimate control over the affairs of the work place;

(iv) in relation to a household the head of the family or Karta of the family;

(d) “establishment” includes a factory, plantation, mine, agriculture field, orchard, livestock rearing site including poultry, shop or business establishment, hospital or nursing home, brick kiln; construction site, banks, financial institutions, cooperatives, Government, semi-Government, local-self Government organizations including Post office and telecom centres, private office or service provider, cyber cafes and call centres, mobile phone companies, firms and such other establishments wherein persons are employed for various performances, airlines, film industry and other places where a woman is employed for any work;

(e) “prescribed” means prescribed by rules made under this Act;

(f) “sexual harassment or exploitation” include any unwanted or unwarranted gesture or sexual advances, avoidable and unwarranted physical contacts, sexually explicit and derogatory statements or remarks, willfully touching or patting, suggestive sexual remarks, sexually slanted and obscene jokes, vulgar comments about physical appearance of the woman, indecent invitation, showing pornographic material, demand for sexual favours either in person or through telephonic call or SMS, threat of physical assault or molestation on refusal by the women employee by their male superiors, colleagues, employer or any one who for the time being is in a position to sexually exploit or harass the working woman at any establishment including a house or demanding sexual favour from a girl student by her male teacher by promising her to pass the examination or increase her marks or by her male research guide or professor by promising her to clear her research thesis or helping her in preparing her research paper or thesis and such other acts of male teacher towards his girl students;

(g) “Woman employee” means any woman who is employed, whether directly or through any agency for wages or for similar other considerations at any establishment or household as the case may be.

3. (1) Sexual harassment of any working woman at an establishment including household or of a girl student in any school, college or university or research centre in any manner whatsoever is hereby prohibited.

(2) Whoever contravenes the provisions of sub-section (1) shall be guilty of an offence under this Act.

4. (1) No housewife or a girl shall be subjected to sexual exploitation or harassment by husband and near and dear relation.

(2) Whoever contravenes the provision of sub-section (1) shall be guilty of an offence under this Act.

Prohibition of sexual harassment of women employees, girl students, research scholars etc.

Prohibition of Sexual harassment of housewife or girl.

Penalty.

5. Notwithstanding anything contained in any other law for the time being in force whoever contravenes the provisions of section 3 shall be punished with imprisonment for a term which shall not be less than five years but may extend to seven years and also with fine which shall not be less than two lakh rupees but may extend to five lakh rupees.

Burden of proof, etc.

6. (1) Notwithstanding anything contained in the Evidence Act, 1872, the onus of proving innocence shall be on the accused and the sexually harassed woman employee, girl student or research scholar, as the case may be, shall have the right to lead evidence in rebuttal.

(2) The trial of an offence committed under this Act shall be held in camera.

(3) Notwithstanding anything contained in any other law for the time being force, the case of a sexually harassed woman employee shall be pleaded either by herself or by her counsel or with her consent by any Women's Organisation or the trade union of which she is a member and in case of a girl student either by herself, or by her counsel or by her parents, relatives or friends as the case may be with her consent.

Provision of Complaint Committees.

7. (1) The appropriate Government shall, as soon as may be, set up or cause to be set up sufficient number of Complaint Committees in all its Ministries and Departments, Subordinate offices, Public Sector Enterprises, Semi-Government Organisations, Banking and Financial Institutions, Trusts and local bodies, Constitutional and autonomous bodies, educational institutions, colleges, universities, institutes and in all the district headquarters and block levels for redressal of complaints made by sexually harassed housewife, woman employee, girl student or research scholar, as the case may be within a time frame.

(2) The Complaint Committee set up under sub-section (1) shall consist of such members and shall follow such procedure as may be prescribed.

(3) The findings and recommendation of the Committee shall be implemented in such manner as may be prescribed.

Act to have overriding effect.

8. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to supplement other laws.

9. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force regulating any of the matters dealt with in this Act.

Power to make rules.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Women and girls are nearly fifty per cent of our population and have remained an exploited lot due to various customs, traditions and beliefs prevailing in the country. Now, there is a visible change and with the spread of education amongst them they form a large part of the nations workforce and their number is increasing very fast. Despite this positive trend, unfortunately, the women employees have to work under the most disadvantageous service conditions in many of the establishments and due to this, cases of their sexual harassment are also increasing day by day. They are sexually harassed very often by their male colleagues, bosses, employers and others but in most of the cases the harassed women do not complain due to fear of social ostracism, family pressure or reprisal through threats and discriminatory treatment of late, there have also been incidents of sexual harassment of housewives and girls at homes by husband and near and dear relations. Such cases of harassment are generally not reported in the first instance unless they become intolerable. Though the offences like physical assault and molestation are punishable under the Indian Penal Code but all aspects of sexual harassment have not been covered by the Indian Penal Code. As a result, the working women feel insecure at their workplaces. The Supreme Court has taken this issue very seriously and in the case of Vishaka and Others vs State of Rajasthan and Others the Supreme Court has laid down norms and guidelines to be followed by employers to prevent cases of sexual harassment and also to provide the procedures for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required including setting up of Complaint Committees for redressal of the complaints made by the victims. The National Commission for Women and various Women's Organisations have also taken up this issue very seriously. However, despite the seriousness of the issue, unfortunately, Complaint Committees do not exist in most of the Government establishments let alone the private ones.

Of late, cases of sexual harassment of girl students by their teachers in schools, colleges and universities have made headlines. Some characterless teachers ask for sexual favour from their girl students promising good marks in examination, get them passed or make such other pretexts. Such cases of sexual harassment need to be dealt with strictly by providing deterrent punishment for the offenders.

Despite the judgment of the Supreme Court, no law has been enacted to prevent sexual harassment of girls and women in establishments and educational institutions.

Hence this Bill.

JAYANTHI NATARAJAN

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for setting up of Complaint Committees in all the district headquarters and Block levels. The Bill, if enacted will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupee seventy crore may involve as recurring expenditure per annum.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

III

BILL NO. XXVI OF 2009

A Bill to provide for the prevention of abuse of children in any form be it forcing them to work, beg, or physical and sexual abuse, or trafficking of girl child for commercial purposes by pushing or forcing her for prostitution after, procuring, luring or kidnapping and making her available for hiring or for taking possession by her client for promiscuous sexual acts by providing deterrent punishment including capital punishment for trafficking and abuse of children and for the rescue, rehabilitation and welfare of such hapless children who have been forced to become child sex workers by the state and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Trafficking and Abuse of Children Act, 2009.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "child" means a boy or girl who is below the age of eighteen years;

(c) "commercialized trafficking" includes forcing the girl child into prostitution for earning money therefrom or using the girl child for any unlawful or immoral purpose or procuring or supplying the girl child for such purpose or hiring or obtaining possession of the girl child for promiscuous sexual purposes;

(d) "orphan or street children" means those children with unknown parentage and who may have been abandoned, vagabond and who subsist on collecting waste paper, plastic items, glass and metal waste from garbage dumps, streets and other public places including the children who are neglected and destitute and work as porter, vendor, shoe shiner, beggar, etc. generally languishing on pavements, hutments, slums, railway platforms, bus stops and such other places and remain deprived and exploited;

(e) "physical abuse" includes forcibly getting things done, treating roughly a child or using violence against such a child to force him to work as domestic servant, child labourer in any establishment or shop, *dhaba*, tea-stall or such place, or beg, steal or drug or hooch trafficking and other crimes or any violent act which may be detrimental to the childhood of the victim child;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "sexual abuse" includes rape, sodomy and other unnatural sexual activities, forcing the child to have sex or into prostitution for earning money or otherwise or having sex with a child;

(h) words and expressions used and not defined in this Act but defined in the Indian Penal Code, 1860 or the Immoral Traffic (Prevention) Act, 1956 shall have the meaning respectively assigned to them in those Acts.

45 of 1860.
4 of 1956.

Prohibition of
Trafficking
and abuse of
children.

3. (1) Notwithstanding anything contained in any other law for the time being in force, trafficking and abuse of children for commercial or any other purpose and in any manner whatsoever is hereby prohibited.

(2) Whoever, contravenes the provisions of sub-section (1) shall be guilty of an offence under this Act.

Penalty.

4. Notwithstanding anything contained in any other law for the time being in force, whoever,—

(a) abets or induces, by whatever means including emotional or blackmailing of any kind, a girl child into prostitution or any child to have unnatural sex with any person including foreign tourist notwithstanding the family relation of such girl child or other child, as the case may be, with the accused or under any prevailing custom shall be punished with life imprisonment;

(b) pushes or forces through coercive or cruel means any child into prostitution or for unnatural sex shall be punished with death;

(c) forces or indulges in commercialized trafficking of girl child or any child for unnatural sex shall be punished with life imprisonment;

(d) lures, procures or kidnaps any child for trafficking or physical abuse shall be punished with imprisonment for a term which shall not be less than ten years but may extend to life imprisonment and also with fine which may extend to five lakh rupees;

(e) indulges in abuse, including physical and sexual abuse, of orphan or street children in any manner whatsoever shall be punished with life imprisonment;

(f) owns or runs a brothel having girl child prostitute or other child for unnatural sex, such owner or manager shall be punished with life imprisonment and also with fine which may extend to five lakh rupees;

(g) indulges in the immoral traffic or a girl child or makes available a girl child or any child for any unlawful or immoral purpose shall be punishable with imprisonment for a term which shall not be less than ten years but may extend to life imprisonment and also with fine which may extend to ten lakh rupee.

(h) hires, procures or obtains possession of a girl child for promiscuous sexual intercourse with her or of a boy for unnatural sex with him shall be punishable with life imprisonment and also with fine which may extend to ten lakh rupee.

2 of 1974.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the offences under this Act shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

6. (1) The offences under this Act shall be tried by the Special Court or the Fast Track Court, as the case may be, for expeditious trial of such offences.

Offences to be tried by Special Courts.

(2) The trial of an offence committed under this Act shall be held in camera.

(3) The appropriate Government shall establish such number of Special Courts and Fast Track Courts as it may deem necessary for the purposes of sub-section (1) and for the fast and quick disposal of cases under this Act.

7. The appropriate Government shall,—

Rehabilitation and other provisions.

(a) take custody of every orphan or street child covered under this Act who is homeless and without guardian and provide him board and lodging and other facilities in the children home established for the purpose;

(b) ensure withdrawal of children covered under this Act from their profession of prostitution, rag picking, begging, petty crimes, or any such profession as may be prescribed;

(c) provide free educational facilities, vocational training and facilities for growth and development to the rescued children;

(d) take such other welfare and rehabilitation measures as may be deemed necessary for carrying out the purposes of this Act.

8. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds for carrying out the purposes of this Act.

Central Government to provide funds.

9. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to the subject matter of this Act.

Act to have overriding effect.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

STATEMENT OF OBJECTS AND REASONS

Children are the future citizens of every nation and as such they need to be brought up in a good atmosphere by providing all the necessities of life along with good education and training. Love and affection is essential for them. But, unfortunately, all the children in our country are not so fortunate to get the love and care in abundance because of their abuse from their tender age. Thousands of minor and adolescent girls and boys go missing from various parts of the country every year and a few fortunate ones are restored to their parents. Most of these children are either kidnapped or lured by the touts and middlemen of organized gangs of criminals and pimps and then are forced into prostitution, begging and other crimes. Girl child trafficking, as it mints money is going on in a very large scale in the country in the name of adventure tourism, particularly in the places of tourist destinations. In this dirty game of money minting, the pimps, organized gangs, touts, underworld dons, brothel keepers, hoteliers, tour operators and others are involved in supplying and making available the girls and boys to their clients. In many cases, even the guardians and near and dear ones do not hesitate in forcing the children into prostitution either for prevailing customs or for the greed of money. In order to run the trafficking business, children are procured through kidnapping, luring on the pretext of getting employment for ensuring a comfortable and decent life, procuring from unsuspecting poverty stricken parents from tribal and other areas. Adolescent girls are even brought from neighbouring countries mainly for the purpose of trafficking. Pimps become active when areas are struck by natural calamities to lure the poor children into their net. Unfortunately, adventure tourism is gaining momentum in the globe including our country. Of course, we cannot blame all the tourists for this, but few affluent ones do indulge in sex tourism and spend lot of money and locals are there to help them. This blatant abuse and trafficking of children has put the lives of unfortunate children in constant danger of deadly AIDS and other sexually transmitted diseases and has snatched away their childhood. All this requires to be handled effectively through deterrent punishment.

Hence this Bill.

JAYANTHI NATARAJAN

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for certain rehabilitation and other welfare measures. Clause 8 makes it obligatory for the Central Government to provide funds for carrying out the purposes of the Bill. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. Though it is not possible to quantify the actual expenditure at this juncture but it is estimated that a sum of rupee ten thousand crore may involve as recurring expenditure per annum.

A sum of rupee five thousand crore may also be involved as non recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of a normal character.

IV

BILL NO. XXVII OF 2009

A Bill to provide for the protection and welfare measures to be undertaken by the State for the infirm, destitute and neglected old women and the widows by extending financial assistance, rehabilitation, medical care and other facilities through a Welfare Board and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Infirm, Destitute and Neglected Old Women and Widows (Protection and Welfare) Act, 2009.

(2) It extend to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "Board" means the Infirm, Destitute and Neglected Women and Widows Welfare Board established under Section 3;

(c) "destitute" in relation to a woman means any female human being who lives uncared for and has become infirm due to old age or chronic or incurable disease, physical deformity or mental imbalance and has no independent and adequate means of livelihood or is not being looked after by her family members or relatives;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "widow" means a female human being who has attained the age of eighteen years and whose husband has died after her legal marriage.

3. (1) The Central Government shall, as soon as may be, by notification in the Official Gazette, establish a Board to be known as the Infirm, Destitute and Neglected Women and Widows Welfare Board for the purposes of this Act.

Establishment
of the Infirm,
Destitute and
Neglected
Women and
Widows
Welfare
Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

(3) The head office of the Board shall be at Chennai in the State of Tamil Nadu and the Board may establish its branches in other States and Union Territories at conspicuous places as the Board may deem fit and necessary;

(4) The Board shall consist of—

(a) the Minister of Women and Child Development of the Union Council of Ministers who shall be *ex-officio* chairperson of the Board;

(b) a Deputy Chairperson preferably a woman with such qualifications and experience, as may be prescribed, to be appointed by the Central Government;

(c) five women Members of Parliament of whom three shall be from Lok Sabha and two from Rajya Sabha to be nominated by the respective Presiding Officers of each House;

(d) five members representing Union Ministries of Home Affairs, Human Resource Development, Health and Family Welfare, Finance and Social Justice and Empowerment;

(e) not more than four members to be appointed by the Central Government in consultation with the Governments of the States, by rotation in alphabetical order, to represent the Governments of the States;

(f) three members to be appointed by the Central Government from amongst the Non-Governmental Organizations (NGOs) working for destitute women or widows, as the case may be.

(5) The Board shall follow such procedure for holding its meetings and quorum for such meetings shall be such as may be prescribed.

(6) The Board shall have a Secretariat consisting of a member Secretary and such number of officers, employees and establishment, with such conditions of service, emoluments and perks, as may be prescribed or determined from time to time for the efficient functioning of the Secretariat of the Board;

4. (1) Notwithstanding anything contrary contained in any other law for the time being in force, the Board shall promote by such measures as it thinks appropriate, necessary and fit, the protective and welfare measures including rehabilitation measures for the infirm, destitute and neglected old women suffering from chronic or incurable disease, physical deformity and mental imbalance and for the widows who have become destitute or have been abandoned by their kith and kin and remain neglected and left to fend for themselves without independent and adequate means of livelihood who are languishing all over the country.

Functions of
the Board.

(2) Without prejudice to the generality of the provisions of Sub-Section (1), the Board shall,—

(a) maintain district-wise register of the infirm, destitute and neglected old women and widows who are subsisting on begging or alms given by general public, chanting *bhajans* at religious places who are to be rehabilitated and are in need of assistance from the Board with such particulars and details and in such manner as may be prescribed;

(b) work out various plans and formulate schemes for the overall welfare and rehabilitation of the infirm, destitute, and neglected old women and widows covered under this Act and implement them in letter and spirit;

(c) conduct a special survey of the old women including widows who have become infirm suffering from chronic or incurable disease, physical deformity or mental imbalance and abandoned by their kith and kin and subsisting on alms as begger or *bhajan* chanting in the temples of Mathura, Vrindavan and other places in Uttar Pradesh and other parts of the country and formulate appropriate medicare and rehabilitation programmes for such old women in such manner as may be prescribed;

(d) give wide publicity through electronic and print media about the welfare and rehabilitation measures being undertaken by the Board so that the women covered under this Act may avail them in a big way;

(e) perform such other functions not inconsistent with the provisions of this Act, as may be assigned to it by the appropriate Government from time to time.

Facilities
by the
appropriate
Government.

5. On the recommendation of the Board or otherwise, the appropriate Government shall provide the old women and widows covered under this Act, the following facilities, namely:—

(a) monthly subsistence allowance of not less than three thousand rupees if the old woman or the widow, as the case may be, is having any dependent children and not less than one thousand five hundred rupee in case she is alone;

(b) residential accommodation free of cost wherever necessary;

(c) free medical care with medicines both indoor and outdoor facilities;

(d) free education to the dependent children as per their calibre;

(e) gainful employment as per the physical condition after imparting vocational training wherever possible;

(f) assistance for rehabilitation like self employment, etc. wherever required;

(g) free legal aid in case the old woman or widow has been thrown out or abandoned by her kith and kin;

(h) such other facilities, as may be necessary for the welfare, rehabilitation, proper development, regaining her lost status in the family and for maintaining a respectable life in the society.

Provided that if the woman covered under this Act either gets remarried, gainful employment and taken back by her kith and kin in the family the facilities being provided to her shall be withdrawn from the date she gets gainful employment, re-entry into her family or her remarriage, as the case may be.

Old women
homes.

6. (1) The appropriate Government shall establish such number of old women Homes as conspicuous places in various parts of its territorial jurisdiction as it may deem necessary for board and lodging of infirm old women or suffering from chronic or incurable disease, physical deformity or mental imbalance or such other physical conditions including widows in such homes with necessary facilities of daily life as may be prescribed.

(2) The appropriate Government shall also provide necessary free medical aid and medicines and means of entertainment to the old women in such Homes. The inhabitants of such old Homes shall not be entitled for subsistence allowance under this Act.

(3) The inhabitants of such old Homes shall not be entitled for subsistence allowance under this Act.

7. Notwithstanding anything contained in any other law for the time being in force or in any custom prevalent, an old woman or widow covered under this Act shall,—

Protective provisions.

(a) not be evicted or thrown out of the house of the in-laws or parents; as the case may be, where such woman or widow was last residing;

(b) be entitled to inherit the property or her share of jointly owned property from her in-laws;

(c) be entitled for maintenance from her in-laws or kith or kin who neglect or abandon the old woman or widow, as the case may be.

8. The Central Government shall, after due appropriation made by Parliament in this behalf by law, provide the requisite and adequate funds to the States, Union Territories and the Board for carrying out the purposes of this Act.

Central Government to provide funds.

9. The Board shall submit an Annual Report in such form and in such manner, as may be prescribed, of its activities in implementing the provisions of this Act to the President of India, who shall cause the Report to be laid before both the Houses of Parliament along with action taken thereon by the Central Government as soon as it is received.

Annual Report of the Board.

10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

Power to remove difficulty.

11. The provisions of this Act and rules made there under shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to the old women and widows covered under this Act.

Act to have overriding effect and supplement other laws.

12. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

STATEMENT OF OBJECTS AND REASONS

In a vast country like ours which is the second most populous nation of the globe it is but natural that there are millions of hapless, unfortunate widows and other destitute old women who are infirm, suffering from chronic or incurable disease, physical deformity or mental imbalance particularly, belonging to poor and middle class groups who live uncared for and neglected by their near and dear ones without independent and adequate means of livelihood. They lead a lonely and miserable life and very often subsist on alms which they get from begging and many a time their physical condition do not allow them to beg which puts a question mark on their very survival. Similarly, millions of women lose their husbands untimely and become widows. Most of them become destitute and their lives become miserable if they do not have a roof over their head and means of livelihood. They are driven out of their in-laws homes or even from their parental homes. If they have children to support their condition goes from bad to worse and they have no option but to beg for survival. They are sexually exploited and many a time forced into prostitution. Many of the widows subsist working as maids or doing petty works. In the society they are treated as a bad women and are not allowed auspicious occasions. Unfortunately to be present on even their kith and kin do not hesitate in ill treating them. Many old women take shelter in old age homes but their number is awfully very short.

Since our democracy is wedded to welfare, it is the sacred duty of the State to initiate protective welfare measures for the infirm, destitute, neglected old women and widows through a Board which will exclusively look after the welfare, rehabilitation and protection of such old women and widows.

Hence this Bill.

JAYANTHI NATARAJAN

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of the Board. Clause 5 provides for the facilities to be provided to the old women and widows by appropriate Government. Clause 8 makes it obligatory for the Central Government to provide funds for carrying out the purposes of the Bill. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupee ten thousand crores may involve as recurring expenditure per annum.

A sum of rupee fifteen thousand crores may also involve as non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

V

BILL NO. XXXII OF 2009

A Bill further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and
commencement.

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2009.
- (2) It shall come into force at once.

Amendment
of Section 497
of Act 45 of
1860.

2. In Section 497 of the Indian Penal Code, 1860,—

(i) for the words "wife of another man, without the consent or connivance of that man", the words "wife of another man, with or without the consent or connivance of that man", shall be substituted;

(ii) for the words "the wife shall not be punishable" the words "the wife shall also be punishable" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Though Section 497 has been there for nearly one and a half century, the very idea that husband may give consent to his wife to have sexual intercourse with another man is obnoxious and highly immoral. Therefore, it is necessary to amend the said provision to the effect that sexual intercourse by a man with the wife of another with or without consent is adultery and is punishable as provided under Section 497.

As far as exempting the woman who indulges in sexual intercourse with a man who is not her husband, who is also a married man, does not provide a remedy to the aggrieved woman namely, the wife of the man who commits adultery, against the woman who indulges in adultery with the former's husband. In fact, the Law Commission in its 42nd report by majority had clearly held that there was no justification to allow the woman who is a party to the adultery to go unpunished. Relevant portion of the said recommendation reads:—

"20.18 After much discussion and careful consideration, we are of the opinion that the exemption, of the wife from punishment under Section 497 should be removed, that the maximum punishment of five years' imprisonment prescribed in the section is unreal and not called for in any circumstance and should be reduced to two years, and that with these modifications, the offence of adultery should remain in the Penal Code. It is accordingly recommended—that the section may be revised, as follows:

497. *Adultery*—If a man has sexual intercourse with a woman who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, the man and the woman are guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The recommendations of the Law Commission is reasonable. Otherwise, as it presently stands, a woman who is a victim of adultery committed by another woman has no remedy as she has to prosecute her own husband and not the woman who has indulged in adultery with her husband. It is, therefore, proposed to amend the Indian Penal Code suitably to meet the objective.

Hence this Bill.

M. RAMA JOIS

VI

BILL NO. XXIX OF 2009

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 2009.

Amendment
of article 37.

2. In article 37 of the Constitution, after the words "The provisions contained in this part" the words and figures "other than Articles 44, 47 and 48" shall be inserted.

Insertion of
new article
37A.

3. After article 37 of the Constitution, the following article shall be inserted, namely:—

SC and HC to
issue writs or
direction.

"37A. (1) Until laws are enacted for the implementation of the directive articles 44, 47 and 48 by the appropriate legislature, the Supreme Court or the High Courts, as the case may be contained in shall have the power to issue appropriate writs or orders for:—

(a) enforcing monogamy among all the citizens and against recognizing divorce other than those granted by the competent Court;

(b) prohibiting the manufacture or sale of intoxicating drinks and of drugs which are injurious to the health of the citizens; and

(c) prohibiting slaughter of cows, calves and other milch and draught cattle.

(2) The writs or orders issued by the Courts under clause (1) shall have the force of law enacted by the competent legislature.

3. In the seventh scheduled to the constitution in list-III concurrence list, after entry 47, the following entry shall be inserted, namely.

Amendment
of the seventh
schedule.

"48. enforcement of the directions contained in articles 44, 47 and 48.

STATEMENT OF OBJECTS AND REASONS

Directive principles of State Policy incorporated in Part-IV of the Constitution though were made unenforceable by any court, by article 37, as stated in that article itself that they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making the law.

There are various directives in Part-IV which are general in nature for the enforcement of which several laws have been enacted. But there are three specific directives incorporated in articles 44, 47 and 48 which are of fundamental importance. The non-implementation of the three articles is the cause for many of the problems the Nation is facing.

Firstly, failure to remove gender discrimination in the matter of marriage and divorce which also happens to be the mandate of article 15 against discrimination *inter alia* on the ground of religion and sex and also directive of article 44 and article 16 of the Universal Declaration of Human Rights, is responsible for communal divide of people and inconsistent with equality, feeling of fraternity and the mandate against gender discrimination and secularism which constitute the elements of basic structure of the Constitution.

The failure to implement article 47 has resulted in a disaster in that substantial percentage of youths have become alcohol addicts and have fallen into immoral acts and habits which are incidental to addiction to alcohol which is the biggest problem the Nation is facing in all its activities.

Failure to implement article 48 has in addition to adversely affecting our cattle wealth and agriculture is also inconsistent with the feeling of fraternity among the citizens.

As it is essential to have a uniform law on these topics as applicable to the whole country List-III in the Schedule-VII is also proposed to be amended by including these items in a new entry 48.

Hence this Bill.

M. RAMA JOIS

VII

BILL NO. XXII OF 2009

A Bill further to amend the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Marriage Laws (Amendment) Act, 2009.

Short title and
commencement.

(2) It shall come into force at once.

CHAPTER II

AMENDMENT TO THE SPECIAL MARRIAGE ACT, 1954

43 of 1954.

2. In the Special Marriage Act, 1954, after Section 44, the following section shall be inserted, namely:—

Insertion of
new Section
44A.

"44A. If an existing marriage, by whatever law it is governed, becomes inter-religious due to change of religion by either party, it shall be governed by the provisions of this Act, including its anti-bigamy provisions."

Existing
marriage
becoming
inter-religious
due to change
of religion.

CHAPTER III

AMENDMENT TO THE HINDU MARRIAGE ACT, 1955

Insertion of
new Section
17A.

3. In the Hindu Marriage Act, 1955, after Section 17, the following section shall be inserted, namely:— 25 of 1955.

Punishment for
marrying again
after changing
religion.

"17A. A Married person, whose marriage is governed by this Act, cannot marry again even after changing religion unless the first marriage is dissolved or declared null and void in accordance with law, and if such a marriage is contracted, it shall be deemed to be null and void and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 shall apply, accordingly."

45 of 1860.

CHAPTER IV

AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment
of the First
Schedule.

4. In the Code of Criminal Procedure, 1973, in the First Schedule,— 2 of 1974.

(a) In the entry against section 494:—

(i) In column 4, for the word "Non-cognizable" the word "cognizable" shall be substituted.

(ii) In column 5, for the word "bailable", the word "non-bailable" shall be substituted.

(b) In the entry against section 495:—

(i) In column 4, for the word "Non-cognizable" the word "cognizable" shall be substituted.

(ii) In column 5, for the word "bailable", the word "non-bailable" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

In our country, marriage laws, except the Muslim law which are in force, prohibit bigamy and treat bigamous marriage as void. For quite some time, the married men whose personal laws do not allow bigamy have been resorting to immoral and unethical practice of converting to Islam for solemnising the second marriage. These men believe that conversion to Islam enable them to marry without dissolving the first marriage. Of late, the marriage of a prominent person after conversion has hit the headlines of the newspapers and electronic media. Besides this, there are many cases of bigamy which go unnoticed. Since the anti-bigamy provisions of the Indian Penal Code are non-cognizable, most of the cases of bigamy remain unpunished as the first wife remains silent and suffers. In the absence of any complaint, the courts cannot do anything. Even the Muslim Personal Law does not permit bigamy in its plain form. The Quran only offers conditional permission for a man to have four wives. It lays down that a person can keep second wife, if he can treat both of them equally and give them equal justice. In most of the cases, the conversion is sham and thus the second marriage is a fraud on the Islamic law and has no recognition under it. Several High Courts while deciding the issue, have held that contracting second marriage after conversion is void and therefore, attracts the punishment under sections 494 and 495 of the Indian Penal Code. Finally, the Supreme Court of India outlawed this practice in *Sarla Mudgil versus Union of India* (AIR 1995-SC-1531). The ruling of the Supreme Court of India that "second marriage after conversion is void was reaffirmed in the year 2000 in the case of *Lilly Thomas versus Union of India* (2000) 6-SC-224.

The Law Commission in its 227th Report has also recommended for amendment of the marriage laws particularly, in view of the Supreme Court's Judgements. Therefore, there is a need to give statutory backing to the legal position settled by the Supreme Court by amending the marriage laws. Further, it is also proposed that offences under sections 494 and 495 of the Indian Penal Code should also be made cognizable and non-bailable to put a check on bigamy.

Hence this Bill.

MAHENDRA MOHAN

VIII

BILL NO. XXXI OF 2009

A Bill to provide for establishment of a Consumer Products Safety Authority as an independent authority to protect the consumer from unsafe and hazardous products; to constantly monitor safety of various consumer products; to make mandatory for consumers, retailers, distributors and manufacturers to report product related accidents and injuries; to direct the distributors and manufacturers to recall the defective products and to prevent supply of defective and spurious products in the market and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Consumer Products Safety Authority Act, 2009.
- (2) It shall extend to the whole of India.
- (3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Authority" means the Consumer Products Safety Authority established under section 3.

(b) "prescribed" means prescribed by rules made under this Act.

(c) words and expressions used but not defined in this Act and defined in the Consumer Protection Act, 1986 shall have the meanings respectively assigned to them in that Act.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be constituted an Authority, to be known as the Consumer Products Safety Authority to perform the functions assigned to it, by or under this Act.

Constitution of Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The Authority shall consist of:—

(a) a Chairperson, who shall be an eminent person active in the field of consumer related matters.

(b) not more than nine members, *ex officio*, to be appointed by the Central Government from amongst the officers, not below the rank of the Joint Secretary to the Government of India, representing the Ministries or Departments of the Government of India dealing with Agriculture and Cooperation, Law and Justice, Textiles, communication and IT, Commerce & Technology, Food Processing Industries, Consumer Affairs, Food & Public Distribution, Chemical and Fertilizers, Micro, Small and Medium Enterprises;

(c) The Chief Secretary or his nominee of any five States to be nominated by rotation in such manner as may be prescribed;

(d) five representatives of traders/manufacturers to be appointed by the Central Government, on case-to-case basis, wherever necessary; and

(e) such other representatives as the Central Government may co-opt for functional purposes.

(4) The Chairperson and the members referred to in clause (a) and (b) shall be appointed by the Central Government and shall be whole-time members of the Authority.

(5) The head office of the Authority shall be at such place as the Central Government may decide.

4. A person shall be disqualified for being appointed as a member if, he—

Disqualifications for office of member.

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the Central Government such financial or other interest in the Authority as is likely to affect Prejudicially the discharge by him of his functions as a member.

Term of office
and conditions
of service of
members.

5. (1) Subject to the provisions of section 6, every whole-time member shall hold office for a period of five years from the date on which he assumes office or till he attains the age of sixty-five years, whichever is earlier:

Provided that the Central Government may—

(a) terminate the appointment of any whole-time member, after giving him notice of a period of not less than three months or, in lieu thereof, on payment of an amount equal to his salary and allowances, if any, for a period of three months;

(b) terminate at any time the appointment of any member, who is a servant of the Government.

(2) The salary and allowances and other conditions of service of the chairperson and other members shall be such as may be prescribed.

(3) The other conditions of service of the members shall be such as may be prescribed.

(4) Any member may resign his office by giving notice in writing for such period as may be prescribed, to the Central Government and, on such resignation being notified in the Official Gazette.

Eligibility of
member for
reappointment.

6. Any person ceasing to be a member shall, unless disqualified under section 4, be eligible for re-appointment.

Meetings of
Authority.

7. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings), as may be provided by rules.

(2) If for any reason, the Chairperson, is unable to attend any meeting of the Authority, any other member chosen by the members present at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence the Person Presiding shall have and exercise a second or casting vote.

Vacancies etc.
not to
invalidate
proceedings of
Authority.

8. No act or proceeding of the Authority shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority;

or

(c) any irregularity in the procedure adopted by the Authority not affecting the merits of the case.

Appointments
of Officers
and other
employees of
Authority.

9. (1) For the purpose of enabling it to efficiently discharge its functions under this Act, the Authority shall appoint such number of officers and other employees as it may consider necessary:

Provided that the appointment of such category of officers, as may be specified, shall be subject to the approval of the Central Government.

(2) Terms and conditions of service and salaries and allowances of officers and employees of the Authority shall be such as may be prescribed.

Functions of
the Authority.

10. (1) Subject to the provisions of this Act, the Authority shall have powers to develop and manage activities for safety of consumers from unsafe and hazardous products in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) the Authority may,—

- (a) Monitor safety of all consumer products available in the market;
- (b) make it mandatory for the manufactures and traders to report immediately any complaint pertaining to safety of a product;
- (c) direct the manufacturers and distributors to recall the defective products;
- (d) direct the manufacture to rectify the defect or replace it within a time frame;
- (e) direct the manufacture to put in place measures for quick traceability of defective products;
- (f) provide a twenty four hour toll free hotline for consumers to report product related accidents and injuries to the Authority;
- (g) *Suo motu* take up safety aspect of any consumer product; and
- (h) cause the collection and analysis of product-related accidents and injuries.

11. The Authority may with the previous approval of the Central Government determine and charge fee or rent, not being statutory levy under any other Act, in such manner as may be provided by rules. Authority to charge fee.

12. The Authority shall establish its own fund and all receipts of the Authority shall be credited thereto and all payment by the Authority shall be made therefrom and shall have power to spend from the fund subject to the provisions of this Act. Authority to establish its fund.

13. (1) The Authority shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed, a report giving an account of its activities during that financial year and the report shall also give an account of the activities which are likely to be undertaken by the Authority during the next financial year. Submission of annual report.

(2) The Central Government shall cause such report to be laid before both Houses of Parliament, as soon as may be, after it is submitted.

14. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time: Power of Central Government to issue directions.

Provided that the Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

(3) The Central Government may, from time to time, issue directions to the Authority regarding the discharge of any functions by it under the clauses of sub-section (2) of section 10 and the Authority shall be bound to comply with such directions.

15. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds for carrying out the purposes of this Act. Central Government to provide funds.

16. Whoever contravenes the provisions of this Act and rules made thereunder shall be punishable with imprisonment, which may extend to three years or with fine which may extend to five lakh rupees or with both. Penalty.

17. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any Director, manager, Secretary or other Officer of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section:—

(i) “company” means anybody corporate and include a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

Power to
remove
difficulties.

18. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this Act shall as soon as may be after it is made, be laid before each House of Parliament.

Act to have
overriding
effect.

19. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save as aforesaid, the provisions of this Act shall be in addition to and not in derogation of any other law, for the time being in force.

Power to make
rules.

20. The Central Government may, by notification in Official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

In 1986, the Consumer Protection Act was enacted in order to protect the rights of consumers buying products from market. Since then the Act has come a long way in protecting the consumers in various eventualities against marketing of unsafe and hazardous goods. But the Consumer Protection Act does not cover the product related injuries and accidents nor it provides for recall of goods found to be unsafe. The product related accidents and injuries do take place in the country. But, as of now generally these matters are dealt with in a casual manner and sorted out locally without much involvement of any Government agency or manufactures. At present there is no mechanism in place for reporting of product related accidents and injuries to any agencies. There is no system of collecting and analysis product related accidents to assess their safety. In many countries there are independent regulatory authority and commissions, which constantly monitor products safety. These authorities provide a toll free twenty-four hour hotline for consumer to report product related accidents and injuries. In the United States of America there is a Consumer Product Safety Commission which mandates the retailers, distributors and manufacturers to report immediately and complaint or information pertaining to safety of the product that they manufacture or sale. It also directs the manufacturers for recall of unsafe product. Similarly, in Europe, there are the General Product Safety Regulations, which place an obligation on manufacturers to not only provide safe goods but also monitor the safety of their products released into the market and withdraw those found to be unsafe. These regulations have also put in place measures to ensure quick traceability of the product and report to the competent authority any information that comes to their knowledge pertaining to the safety. Similar laws are there in Canada and Australia also.

There is a major gap in the area of consumer safety in our country and many a time consumer safety is compromised. In the expanding globalization, our consumer protection laws also need to be of global standard. It is, therefore, proposed to establish an authority to monitor the safety of consumer products which will *inter alia* also direct for recall of the defective product.

Hence this Bill.

MAHENDRA MOHAN

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for establishment of the Consumer Products Safety Authority. Clause 9 provides for appointment of officers and employees of the Authority. Clause 15 provides that the Central Government shall provide funds for the purposes of the Act. The Bill, if enacted, will involve expenditure of Rupees one hundred crore from the Consolidated Fund of India. A non-recurring expenditure of rupees fifty crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules will relate to matters of details only, the delegation of legislative power is of a normal character.

IX

BILL NO. XXX OF 2009

A Bill to provide for a common entrance examination for each professional course for admission into various government and private professional institutions offering higher education in the country and to regulate the fee structure of the private institutions offering professional courses including the application fee charged before admission and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Professional Courses (Common Entrance Examinations and Miscellaneous Provisions) Act, 2009.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State, the Government of that State and in all other cases, the Central Government;

(b) "entrance examination" means any pre-admission test including a written or an oral test or both conducted for the purpose of enrolment or admission of a candidate to a professional course of study imparted by a professional institute;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "professional course" means degree course in engineering, information technology and computer science, medical, law or mass media;

(e) "professional institute" means an institution or a college including a professional college recognised by or affiliated to any university or a body or including the institutions or colleges established by or under a statute of the Central Government or the State Government, as the case may be, for imparting education and awarding degree after senior secondary level school education.

Central Government to conduct common entrance examination.

3. (1) On and from such date, as the Central Government may by notification in the Official Gazette appoint, there shall be one all India examination for each professional course in the country to be conducted by the Central Government in consultation with each State Government in such manner, as may be prescribed:

Provided that before implementing the provisions of sub-section (1), the Central Government shall ensure that there is common syllabus for each subject at the secondary school level in which entrance examination is conducted through out the country.

(2) The Central Government, in consultation with the Government of each State, ensure that admissions in all professional institutes within their respective jurisdiction shall be made exclusively on the basis of marks or grade, as the case may be, obtained by each candidate in the common entrance examination of the concerned course.

(3) The Central Government shall, in consultation with the Government of each State, prepare the framework and decide about the modalities for admission in Professional Institutes on the basis of common entrance examination in such manner, as may be prescribed:

Provided that the provisions of section 3 shall not be applicable to entrance examination conducted by the Indian Institutes of Technology, Indian Institutes of Management, All India Institute of Medical Sciences and institutes under the jurisdiction of Armed Forces.

Appropriate Government to regulate fee structure.

4. (1) The appropriate Government shall regulate the fee structure of each Professional Institute within its jurisdiction in such manner, as may be prescribed.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the standards of faculty and facilities maintained by a Professional Institute shall always be taken into consideration while regulating the fee structure of a Professional Institute.

(3) The Central Government shall, in consultation with the Government of each State, constitute a monitoring committee, in such manner as may be prescribed, to monitor and review the fee structure of Professional Institutes in each State.

Professional Institutes not to charge application fee.

5. (1) On and from the appointed day as the Central Government may notify in the Official Gazette in this behalf, no Professional Institute shall charge any application fee for admission to any professional course except the actual cost of application form and the prospectus.

(2) All Professional Institutes shall make their application form available on their website or make them available in the premises of the institute or at such places, as may be prescribed.

Central Government to provide funds.

6. The Central Government shall, after due appropriation made by Parliament in this behalf provide funds for the purpose of this Act.

Overriding effect of this Act.

7. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, but save as aforesaid, the provisions of this Act shall be in addition to and not in derogation of any other law, for the time being in force.

8. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such direction, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the difficulty:

Power to
remove
difficulty.

Provided that no such order shall be made after the expiry of the period of three years from the date of commencement of this Act.

9. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to
make rules.

(2) Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament. While it is in Session, for a total period of thirty days, which may be comprised in one Session or in two or more successive Sessions, and if, before the expiry of the Session immediately following the Session or the successive Sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. So, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Every year, lakhs of students appear for entrance examinations of various professional courses in the country. There is no single common entrance examination for any professional course in the country. As a result, some entrance examinations are conducted by the Central Government and the State Governments, while private professional institutes are having their own examinations for admission to their professional courses. Every year, immediately after the conclusion of the senior secondary examinations, every Saturday or Sunday a large number of candidates appear for various entrance examinations almost for three months. Sometimes, the dates of various examinations clash and the students have to choose entrance examination of any one of the Professional Institutes. Even the syllabuses of various examinations are different mainly on the aspect of difficulty level. As a result students have to prepare differently for different examination. Besides, it has also been observed that the private Professional Institutes charge huge money along with application form although they do not conduct any examination and admit students on the basis of examination conducted by the Central Board of Secondary Education or other authority. In this manner, these institutes collect crores of rupees as application money which is unjust. Similarly, often voices are raised against exorbitant tuition fee and other charges collected by various Professional Institutes, while admitting the students in various courses. Many a time directions have been issued by Courts to regulate fee structure of private institutes, but things remain unchanged. Some States have taken a lead in this regard, but on the whole, the area is still unregulated. With this kind of arrangement in place, the lakhs of students as well as their parents suffer a lot physically as well as financially. In view of this, it is being felt that it would be more appropriate, if a single entrance examination for each professional course is conducted and fee structure, etc. of private professional institutes is regulated in consultation with the State Governments.

Hence this Bill.

MAHENDRA MOHAN

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that there shall be one all India entrance examination for each professional course to be conducted by the Central Government in consultation with the State Governments. Clause 6 of the Bill provides that the Central Government will provide funds for carrying out the purposes of the Bill. It is estimated that an amount of rupees one hundred crore would be involved from the Consolidated Fund of India annually. It is also estimated that a non-recurring expenditure of rupees fifty crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

X

BILL NO. XLVI OF 2009

A Bill to provide for control of sale and distribution of acids in order to prevent the acid attacks on human being particularly women and girls and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Acid (Control) Act, 2009.
- (2) It extends to the Union Territories only.
- (3) It shall come into force with immediate effect.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "acid" means any acidic solution sale and distribution of which is declared by the Central Government to be governed by or under the provisions of this Act.

(b) "dealer" means a person carrying on either personally or through any other person the business of selling any acid whether wholesale or retail.

(c) "Controller" means the Controller of Acids appointed by the Central Government under section 4.

(d) "prescribed" means prescribed by rules made under this Act.

3. (1) The Central Government shall, by notification in the Official Gazette, publish a list of acids to which the provisions of this Act shall apply.

Central Govt. to publish list of acids to which this Act apply

(2) The Central Government may, at any point of time, may amend the list published under sub-section (1) above.

4. (1) The Central Government shall, by notification in the Official Gazette, appoint a Controller of Acids to control and regulate the sale and distribution of acids in such manner as may be prescribed.

Appointment of Controller of Acids.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Controller shall be empowered to,—

(a) ban the retail sale of acid to specified persons;

(b) prescribe compulsory licences for dealers authorised to sell acid in retail;

(c) ensure that the dealers, who sell acids, shall record the sale transactions in such manner as may be prescribed.

(3) The Controller shall be assisted by such number of officers, inspectors and employees as may be prescribed.

(4) The salaries, allowances and terms and conditions of appointments of the officers and employees shall be such as may be prescribed.

5. Subject to provisions of section 6, no person other than the authorised dealers shall sell or possess any acid.

Authorised dealers to sell acid.

6. The Controller may, by notification, exempt any bonafide industrial or academic user from the provisions of this Act.

Exemptions on use of acids.

7. (1) Whoever contravenes any of the provisions of this Act or fails to comply with any direction made under authority conferred by this Act shall be punishable with imprisonment for a term which may extend to three years, or with fine, which may extend to fifty thousand rupees or with both.

Penalties.

(2) A Court convicting any person of an offence punishable under this Act may order that the whole or any part of the stock of acids in respect of which the offence was committed shall be forfeited to the Government and the establishment from which the stock was released shall be sealed.

(3) It shall be a defence for a person charged with a contravention of any of the provisions of this section to prove that, in relation to matter in respect of which he is charged, he acted in the course of his employment as a servant or agent of another person on the instructions of his employer or of some other specified person.

8. Where a person committing an offence punishable under this Act is a company or an association or a body of persons, whether incorporated or not, every director, manager, secretary, agent or other officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Offences by corporations.

9. In all trials for offences under this Act or the rules made thereunder, the magistrate shall follow the procedure prescribed in the Code of Criminal Procedure, 1973, for the trial of summary cases in which an appeal lies.

Procedure for appeal.

10. In trials under this Act, it may be presumed unless and until the contrary is proved, that the accused has committed an offence under this Act or the rules made thereunder in respect of any acid preparations for the possession of which he fails to account satisfactorily.

Presumption of possession.

11. Any person competent to investigate any offence under this Act may search any place in which he has reason to believe that an offence under this Act has been, or is being

Power of search and seizure.

committed, and take possession of any stock of acid in respect of which the offence has been or is being committed and the provisions of the Code of Criminal Procedure, 1973, shall, so far as may be applicable, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under that Code. 1 of 1974.

Vexatious
search and
seizure.

12. Any officer exercising powers under this Act or under the rules made thereunder who—

(a) without reasonable ground for believing that it is necessary so to do, searches or causes to be searched any house, building or enclosed place or any vehicle, vessel or aircraft;

(b) vexatiously or unnecessarily seizes any acidic preparation;

(c) vexatiously or unnecessarily details, searches or arrests any person; or

(d) commits, as such officer, any other act to the injury of any person, without having reason, believe that such act is required for the execution of his duty;

shall for every such offence be punishable with fine which may extend to twenty thousand rupees.

(2) Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to twenty thousand rupees, or with imprisonment for a term which may extend to one year, or with both.

Saving of
other laws.

13. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force regulating any of the matters dealt with in this Act.

Power to
make rules.

14. The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

During the past few years there is sudden spurt in the incidents relating to acid attacks particularly, on women in the country. Every year many women are killed, maimed, blinded or scared for life by the acid attacks. The main and simple reason for this increase in such incidents is that there is no law in the country to regulate the sale of acids. As of now, anybody can walk down to the nearby store and can purchase any amount of acid over the counter for less than twenty rupees. In many countries, including Bangladesh there is an Acid Control Act which regulates the sale of acid and also the way it is produced, stored and transported. Unfortunately, in our country the acid is carelessly allowed to become a deadly weapon. Once this weapon is used on any women, the victim goes through a trauma throughout her life as even after many cosmetic surgeries and corrections the scar does not leave. Besides, there is permanent scar on the mind of the women reminding her of the gruesome incident throughout her life. There is a constant demand that a separate law should be in place to punish offenders of acid attacks but at the same time there is also a proposal that the focus of the remedial action should be on controlling the sale of acids, rather than punishing the perpetrators. It is, therefore, high time that a law on controlling the retail sale of acids should be framed and the violators should be severely punished. However, the bonafied users for industrial, research and academic purposes should be exempted from the purview of such law which shall be applicable to Union Territories only in view of the jurisdiction of the respective Governments on the subject.

The Bill seeks to achieve the above objectives.

Hence this Bill.

KALRAJ MISHRA

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for appointment of controller of Acids, Officers, Inspector and Employees by the Central Government to control and regulate the sale and distribution of Acids. It is estimated that an amount of rupees one hundred crore would be involved from the Consolidated Fund of India annually. It is also estimated that a non-recurring expenditure of rupees fifty crore will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

XI

BILL NO. XXXVIII OF 2009

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

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| 1. (1) This Act may be called the Constitution (Amendment) Act, 2009. | Short title and commencement. |
| (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint. | |
| 2. In article 16 of the Constitution, after clause (4A), the following clause shall be inserted, namely:— | Amendment of article 16. |
| "(4B) Where the total percentage of reservation to the Scheduled Castes and the Scheduled Tribes in any State exceeds fifty per cent or is close to fifty per cent, nothing in the article shall prevent the State from reserving further seats for other Backward Classes of citizens in Government services even if the total percentage of seats reserved including seats reserved for the Scheduled Castes and the Scheduled Tribes exceeds fifty per cent." | |
| 3. In article 16 of the Constitution, clause (4B) shall be re-numbered as (4C). | |

STATEMENT OF OBJECTS AND REASONS

In the State of Tripura, the percentage of ST people is thirty-one and that of SC people is seventeen per cent the total of the two being forty-eight per cent. It is very close to fifty per cent. The OBC population in the State is twenty-four per cent. That is why the State Government cannot provide reservation to the OBC persons on account of the bar of the upper limit of fifty per cent to the total percentage of reservation in a State. The State Government have no right to cross that upper limit. The unemployed youth belonging to OBC are getting seriously deprived of the reservation facilities in the State Government services. Similar nature of problems is prevalent in some other States of the country also. This is not a common type of problem. Rather, this is an extraordinary nature of problem for which extraordinary provision may be permissible. This amendment will go a long way in providing reservation facility to the OBC people and will, hence, benefit the unemployed youths belonging to Tripura and some more States. The significance of the amendment is deep and necessity is inevitable.

Hence this Bill.

MATILAL SARKAR

XII

BILL NO. XXXVII OF 2009

A Bill further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 2009. Short title and commencement.
(2) It shall come into force on such date as the Central Govt. may, by notification in the Official Gazette, appoint.
2. For section 66 of the Representation of the People Act, 1951, the following shall be substituted, namely:— Amendment of Section 66 of Act 43 of 1951.
 - “66. (1) When the counting of votes has been completed, the Returning Officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder provided that the winning candidate has secured not less than an absolute majority of the valid votes polled. Declaration of results.
 - (2) In the event of no candidate having polled the requisite majority of votes, there shall be a repoll within a week amongst two candidates who have polled highest and the second highest number of votes at the original poll and at the completion of the repoll in accordance with the provision of this Act and the rules made thereunder, the Returning Officer shall declare the result forthwith in accordance with the provisions of sub section (1) of section 66”.

STATEMENT OF OBJECTS AND REASONS

We have adopted Parliamentary system of democracy and the peoples' representatives to the House of the People and State Legislative assemblies are elected through direct election. There is, however, no stipulation regarding the minimum number of votes required to be polled by the winning candidates. In view of the multiplicity of parties in our system and unrestricted number of candidate's allowed to contest elections, the winning candidates in a vast majority of cases poll very low percentage of valid votes polled and can, therefore, hardly be treated as having a true representative character. There is, therefore, a need that a provision be made that the winning candidates should poll absolute majority of valid votes polled.

In the event of no candidate securing the requisite majority of votes, there should be a repoll amongst the two candidates having polled the highest and the next highest number of valid votes. This will make the elected representatives truly having representative character. Accordingly, section 66 of the Representation of the People Act, 1951, is required to be suitably amended.

Hence this Bill.

RAJEEV CHANDRASEKHAR

XIII**BILL NO. XXXVI OF 2009***A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2009.

Short title and
commencement.

(2) It shall come into force at once.

2. In Article 324 of the Constitution, in clause (5) for the existing provisos, the following provisos shall be substituted, namely:—

Amendment
of article
324.

“Provided that no Election Commissioner shall be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of any Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.”

STATEMENT OF OBJECTS AND REASONS

The Founding Fathers of our Constitution have given us a parliamentary system of democracy. As fair and free elections are the bedrock of democracy, provision has been made for an Election Commission which has been vested with superintendence direction and control of elections. The Commission at present is a multi-member body, whereas the Chief Election Commissioner can be removed from office in like manner and on like grounds as a Judge of the Supreme Court and that his conditions of service cannot be varied to his disadvantage after appointment, no such protection has been given to other Election Commissioners. On the contrary, an Election Commissioner can be removed from service on the recommendation of the Chief Election Commissioner. In other words, the status of other Election Commissioners is inferior and subordinate to the Chief Election Commissioner. That means all the Election Commissioners do not have equal rights and status. This situation does not appear to be just and reasonable.

Recently, a controversy on this issue arose when the Chief Election Commissioner recommended the removal of one of his colleagues. The recommendation was not accepted by the President.

In view of this position, it is necessary and appropriate that the status of all the Election Commissioners in the matter of removal from service and the protection of the service conditions after appointment should be equal as in the case of the Judges of the Supreme Court. Accordingly, the relevant provisions of article 324 are required to be suitably amended.

Hence this Bill.

RAJEEV CHANDRASEKHAR

V. K. AGNIHOTRI,
Secretary-General.